D.B.MISC. APPLICATION NO. 79/2006
IN
D.B.HABEAS CORPUS PETITION NO.1563/2006
(Fogiya Vs. State of Rajasthan & Anr.)

Date of Order: October 31, 2006

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.K.L.Thakur, Additional Advocate General

Mr.V.K.Mathur, for Union of India

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

By way of instant application a prayer has been made on behalf of Union of India as well as the State of Rajasthan to extend the time for the compliance of the order of this Court dated 21st September, 2006.

The petitioner in the original petition namely Fogiya was arrested on 12.11.1993. He was put to trial for offence under the N.D.P.S. Act and Section 14 of the Foreigners Act. He was convicted for offence under the N.D.P.S. Act by the judgment dated 17.8.1994 passed by the Special Judge, NDPS Act Cases, Jodhpur. However, he was acquitted of offence under Section 14 of the Foreigners Act. The Court left the issue of citizenship open to be determined by the Central

Government. He completed the sentence on 11.11.2005. for the complete 11 years irrespective of the fact that the court had given a liberty to the Central Government to determine the issue as to the citizenship of the petitioner, nothing was done. The State Police instead of releasing on completion of the sentence, detained him under Section 109 Cr.P.C. The detention was challenged by way of Habeas Corpus Petition before this Court. It was ruled that the proceedings under Section 109 Cr.P.C. were wholly misconceived. However, he was not released and by order dated 25.1.2006 he was again detained under Section 3(1)(b) of the National Security Act, 1980. The grounds of detention reads as follows:-

> "The State Government has made request to the Government of India for your deportation and the process for deportation may take some time.
>
> Therefore, under section 3(1)(b) of National Security Act, 1980, the State Government is empowered to detain you till your deportation proceedings are completed."

The petitioner challenged the said order on number of grounds. It was contended that inspite of judicial direction in last 12 years, no efforts have been

made by the respondents to get the controversy resolved. It was also submitted that there is over-whelming evidence on record which leads to the conclusion that the petitioner is an Indian Citizen. Noticing the contention, the Court observed, thus,

> "There is some substance in the contention raised by the learned counsel for the petitioner as to inaction and complete misdirection of the respondents in keeping the issue alive for number of years. Though the respondents have taken a plea to get the citizenship determined under the provisions of Section 13 of the Act of 1955 but it clearly appears that the officers in the concerned department are completely ignorant as to the procedure to get the citizenship determined by the Central Government. Less said the better it is, about the knowledge and inaction on the part of officers of the concerned department. The manner in which they have dealt with the issue in last 12 years, speaks in volume about their lack of knowledge on the subject and inefficiency."

It was further observed,

> "Even after the order of detention in last eight months, they have not been able to do anything. Petitioner has been detained pending deportation proceedings for which, the pre-condition is the decision of the Central Government as to the citizenship of the petitioner. We are told that there are no clear guidelines in this regard, as a result large number of poor and illiterate persons are loitering around the Government offices & the concerned

> officers are passing time on adhoc-ism taking shelter of ipse dixit reasons."

Taking all facts and circumstances into consideration particularly the fact that the concerned authorities in the State and the Union of India had not taken any steps to determine the issue as to citizenship of petitioner Fogiya, this Court directed to determine the same latest by 30th October, 2006. The lethargy on part of the concerned authorities at the cost of liberty of a person is disturbing. Thus, keeping in view the total non-seriousness showing total insensitiveness to liberty of a person, in order to ensure that the order of this Court is complied with, not only provided time framed but also impressed upon that in the event the issue is not decided by the said date, the further detention of the petitioner shall not be allowed and he shall be set at liberty.

The perusal of the instant application shows that even after the order of this Court no effective steps were taken either by the State or the Union of India to conclude the proceedings within the time framed. Now, the time is sought to be extended as usual in a most casual manner for a further period of three months on

the ground that large number of documents produced by the petitioner Fogiya are required to be scrutinized. The reason sought is nothing but a usual casual ipse dixit.

Having heard the learned counsel for the applicants and perused the record, we are of the view that there is no good ground to extend the time. We disapprove the tendency of avoiding a final decision as long as it can be and ultimately shift the burden to the courts. The plea that the petitioner has produced number of documents, which are required to be scrutinized is not tenable for the reason that the entire material already existed on record for number of years. The petitioner has not produced anything fresh. Even during the pendency of the writ petition the relevant material was produced with the brief application, which reads as follows:-

> "The respondent State submits herewith an additional affidavit with the confidential and secret reports which may kindly be taken on record for kind perusal of this Hon'ble Court."

Thus, it is evident that entire material is on file. The authority concerned is required to peruse the same

and pass an appropriate order, which they are avoiding. They are least bothered of liberty of a person. Simply ipse dixit of using words **"Pak-National"** or **"National Security"** can not deprive a person of his liberty for indefinite period. There is no material on record to show that Fogiya is a Pak National or he has indulged in anti-national activities.

In view of the fact that there are no justified reasons to extend the time for compliance of the order of this Court, the application stands dismissed without prejudice to pending proceedings of citizenship.

(MANAK MOHTA) J. **(N.N.MATHUR), J.**

BKS/-